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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1949

No. [redacted] 41

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., AND ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY,

Appellants,

vs.

THE CAPITAL TRANSIT COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STATEMENT OF CAPITAL TRANSIT CO. OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

EDMUND L. JONES,
F. G. AWALT,
SAMUEL O. CLARK, JR.,
DARYAL A. MYER,
Counsel for Appellee,
Capital Transit Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 630

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC. AND ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY,

Appellants,

v.

CAPITAL TRANSIT COMPANY,

Appellee

STATEMENT IN SUPPORT OF MOTION TO DISMISS OR AFFIRM AND REPLY TO APPELLANTS' STATEMENT AS TO JURISDICTION.

I.

Introductory Statement

The Appellants, Washington, Virginia & Maryland Coach Company, Inc. (W. V. & M.) and Alexandria, Barcroft and Washington Transit Company (A. B. & W.) assign twenty-one errors of the Court below. But, like the errors assigned in the appeal of the United States of America and the Interstate Commerce Commission, most of the errors assigned are general in nature and do not specifically relate to the relatively simple question decided below.

The question so decided below was confined to a resolution of the conflict between the statutory regulatory power of the Interstate Commerce Commission and the Public Utilities Commission of the District of Columbia over the compensation of Capital Transit Company for its service wholly from one point to another within the District as an indistinguishable part of its local transportation services within the District. In resolving that conflict in favor of jurisdiction in the District Commission the Court relied only upon the proviso to Section 216 (e) of the Interstate Commerce Act (49 U. S. C. 1946 Ed. § 316 (e)), *United States* v. *Yellow Cab Co.*, 332 U. S. 218, and the pertinent provisions of the District Public Utility Law (37 Stat. 974; Title 43, Sections 101-107, D. C. Code, 1940) and other Federal legislation (Merger Act of Jan. 14, 1933; Public Res. No. 47, 72nd Congr.; 47 Stat. 752, ch. 10).

The judgment of the District Court set aside and enjoined the Commission's orders, only "insofar as they relate to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor." There was and is no controversy over the authority of the Interstate Commerce Commission to regulate the admittedly interstate services of these appellant Virginia companies; and there is nothing in the lower court's judgment which affects such authority over the services of these appellants.

It is apparent that most of the errors assigned by these appellants have no direct relation to the decision below. None of such errors assigned attack the findings of the district court in any matter of substance. Many of such assigned errors allege the failures to make certain findings obviously irrelevant to the decision below. Indeed, certain of the assigned errors asserting the failure to make findings, such as assignment of errors numbered 9, 10, and 11, are frivolous on their face when compared with findings,

umbered 4 and 5 of the Court which include the substance f the desired findings.

The purported statement by the appellant Virginia companies of the grounds upon which it is contended that he questions involved are substantial, is wholly inadequate in meeting the requirements of paragraph 1 of Rule 2 of this Court. It refers to only two points, the second f which relates to the jurisdiction of the Commission over ppellants and is not in controversy. The first point referred to in such statement merely restates that the Commission reaffirmed its earlier orders on the basis of *United States* v. *Capital Transit Co.*, 325 U. S. 357. But the only ssignment of error specifically related to this point is umber 3 which is limited to a contention that the case of *Inited States* v. *Capital Transit Co., supra,* is *res judicata* nly insofar as the Commission's order of June 22, 1945 is oncerned. There is no similar assignment of error with espect to the Commission's orders of May 9, 1947 and July , 1948.

Much of what we said in our statement supporting our Motion to Dismiss or Affirm filed in the appeal of the Jnited States and the Commission is equally applicable to he assignments of error and Jurisdictional Statement of hese appellant Virginia Companies. Reference is hereby nade to that Statement.

II

Statutory Basis of the Lower Court's Decision on Its Undisputed Findings Is Not Reasonably Open to Argument

In support of our Motion on the ground that the questions aised by these appellants, on which the decision of the ause depends, are so unsubstantial as not to need further rgument, we make reference to parts II and III of our Statement in support of a similar motion against the ppeal of the United States and the Commission.

We need not elaborate on that Statement except to point out that these appellants do not attack any findings of the Court below upon which its decision was based, except that contained in finding number 18 that Capital Transit did not voluntarily engage in joint transportation with the Virginia companies. We submit that the history of the litigation is enough to show that any such participation in a joint transportation arrangement was entirely the result of the compulsion of the orders of the Interstate Commerce Commission, and any contention that such participation was voluntary under such circumstances is wholly without substance. In any event, as other findings of the Court show, Capital Transit has done everything in its power to eliminate its participation in any joint transportation arrangement irrespective of whether such an arrangement was entered into under compulsion or otherwise.

III

Failure to File a Bond on Appeal Requires Dismissal of Appeal

The record before the District Court does not show that these appellants have filed any bond to secure costs, interest, or damages of the appellees caused by the delay on appeal or by the stay of the judgment of the lower Court pending appeal.

Paragraph 1 of Rule 36 of this Court requires that:

> "The judge or justice allowing the appeal shall take the proper security for costs * * * and he may also, on taking the requisite security therefore, grant a supersedeas and stay of execution or of other proceedings under the judgment or decree, pending such appeal."

Paragraph 2 of such Rule 36 requires that:

> "Supersedeas bonds must be taken, with good and sufficient security, that the appeliant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good."

Rule 72 of the Federal Rules of Civil Procedure requires, n appeal from district courts to this Court, "a bond on ppeal and supersedeas bond taken • • • as prescribed y law and the Rules of the Supreme Court governing uch an appeal."

The absence of the bond or bonds required by the Rules equires that the appeals of these appellants be dismissed.

IV

Conclusion

It is respectfully submitted that the questions raised by ppellants, on which the decision of the cause depends, are o unsubstantial as not to need further argument; that hese appellants have not complied with the Rules requiring onds; and, accordingly, the Motion to Dismiss or Affirm hould be granted.

Dated this 17th day of February, 1949.

Respectfully submitted,

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Capital Transit Company.

SUPREME COURT OF THE UNITED STATES

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No. 630

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC. AND ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY,

Appellants,

v.

CAPITAL TRANSIT COMPANY,

Appellee.

MOTION TO DISMISS, OR AFFIRM AND REPLY TO APPELLANTS' STATEMENT AS TO JURISDICTION.

Motion to Dismiss or Affirm

Comes now Appellee, Capital Transit Company, and moves that the decision and judgment of the statutory United States District Court composed of three judges, from which the appeal is taken in this case by Washington, Virginia & Maryland Coach Company, Inc. and Alexandria, Barcroft and Washington Transit Company, be affirmed; or in the alternative, that such appeal be dismissed. Such Motion is made on the grounds: (a) that the questions raised in said appeal on which the decision of the cause

depends are so unsubstantial as not to need further argument; and (b) that the record does not show that appellants have filed any bond on appeal to secure costs, interest, or damages for delay, as required by Rule 36 of the Rules of the Supreme Court of the United States, and by Rule 72 of the Federal Rules of Civil Procedure.

Dated this 17th day of February, 1949.

Respectfully submitted,

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